

PATENT COOPERATION TREATY
PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
 (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference VALS 959 PCT	FOR FURTHER ACTION	
		See Form PCT/IPEA/416
International application No. PCT/FR2004/050535	International filing date (<i>day/month/year</i>) 26.10.2004	Priority date (<i>day/month/year</i>) 28.10.2003
International Patent Classification (IPC) or national classification and IPC G01 F15/06, A61 M11/00, B05B12/08, B05B11/00		
Applicant VALOIS SAS		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>2</u> sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																									
<p>4. This report contains indications relating to the following items:</p> <table style="margin-left: 20px; border-collapse: collapse;"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
 - international search (Rule 12.3 and 23.1(b))
 - publication of the international application (Rule 12.4)
 - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):
 - the international application as originally filed/furnished
 - the description:

pages 1-5 _____ as originally filed/furnished

pages* _____ received by this Authority on _____

pages* _____ received by this Authority on _____
 - the claims:

nos. _____ as originally filed/furnished

nos.* _____ as amended (together with any statement) under Article 19
nos.* 1-7 _____ received by this Authority on 04.07.2005 with letter
nos.* _____ received by this Authority on of 29.06.2005
 - the drawings:

sheets 1/1 _____ as originally filed/furnished

sheets* _____ received by this Authority on _____

sheets* _____ received by this Authority on _____
 - a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. The amendments have resulted in the cancellation of:
 - the description, pages _____
 - the claims, nos. _____
 - the drawings, sheets/figs _____
 - the sequence listing (specify): _____
 - any table(s) related to sequence listing (specify): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - the description, pages _____
 - the claims, nos. _____
 - the drawings, sheets/figs _____
 - the sequence listing (specify): _____
 - any table(s) related to sequence listing (specify): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
<p>1. Statement</p> <p>Novelty (N) Claims <u>1 - 7</u> YES Claims _____ NO</p> <p>Inventive step (IS) Claims _____ YES Claims <u>1 - 7</u> NO</p> <p>Industrial applicability (IA) Claims <u>1 - 7</u> YES Claims _____ NO</p>		
<p>2. Citations and explanations (Rule 70.7)</p> <p>Reference is made to the following documents:</p> <p>D1: US-A-6 138 669 (ROSSITER DANIEL J ET AL) 31 October 2000 (2000-10-31)</p> <p>D2: FR-A-2 807 346 (SEYDOUX HENRI) 12 October 2001 (2001-10-12)</p> <p>D3: US-A-5 794 612 (WACHTER ALLAN ET AL) 18 August 1998 (1998-08-18)</p> <p>D4: EP-A-0 667 168 (CIRCADIAN INC) 16 August 1995 (1995-08-16)</p> <p>D5: WO 00/35524 A (PIRRIE ALASTAIR BRUCE; DAVIES NEVILLE (GB); ELECTROSOLS LTD (GB);) 22 June 2000 (2000-06-22)</p> <p>D6: DE 38 09 719 A1 (MUEHLBAUER, JOHANN, 7956 ROT, DE) 5 October 1989 (1989-10-05)</p> <p>1. The present application fails to meet the requirements of PCT Article 33(1), since the subject matter of claims 1 to 7, <u>in so far as said claims can be understood</u>, does not involve an inventive step as defined by PCT Article 33(3).</p> <p>2. Independent claim 1</p> <p>2.1 D1 describes (see the figures and the</p>		

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

corresponding description) a device (1, 2) for spraying fluid, comprising a fluid dispensing pump (3 to 5 and 10) and a spray head (2) for manually actuating said pump (cf. column 4, lines 63 to 67), which device further comprises dispensing detection means (12, 12A) for detecting the dispensing of a metered amount of fluid (cf. column 5, lines 10 to 18), said detection means being suitable for generating a signal to inform the user that a metered amount of fluid has effectively been dispensed by said pump (cf. column 2, line 52 to column 3, line 58).

- 2.2 Said spraying device differs from the one constituting the subject matter of claim 1 in that the pump operates without propellant gas and without active spraying means, such as piezoelectric or electrostatic spraying means. The problem that the present invention is intended to solve can be considered to be that of protecting the environment.
- 2.3 The solution proposed in claim 1 of the present application is not considered inventive for the following reasons:

The problem of environmental pollution arising from the use of aerosols is a recurrent problem largely identified in the prior art (see in particular **D6**, column 1, lines 3 to 15). The solution proposed in said document consists in using a pump operating by electrical means (see

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<p>D6, column 1, line 65 to column 2, line 51). For a person skilled in the art, the other obvious option consists in using a manual pump without propellant gases and without electrical spraying means; this kind of pump is known and widely used in devices for delivering metered amounts of drugs, particularly in <u>nasal spray devices</u>.</p> <p>In the present case and taking D1 as the starting point, a person skilled in the art would consider using such a manual pump to solve the above-mentioned problem, since the pressure sensor cited in D1 (cf. column 5, lines 25 to 26) has a pressure range (cf. column 5, lines 32 to 33) entirely compatible with that created in the discharge channel of the manual pumps in question.</p> <p>3. Dependent claims 2 to 7</p> <p>Dependent claims 2 to 7 contain no feature which, when combined with the features of any one of the claims to which they refer, defines subject matter that complies with the PCT requirements of novelty, since all the additional features of claims 2 to 7 are described in D1 (cf. column 4, line 46 to column 10, line 3).</p>	

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. The claims fail to comply with the requirements of PCT Article 6 for the following reasons:
2. According to **claim 2** "said detection means are provided in said discharge channel", which appears to contradict the figure of the present application. Indeed, the detection means (30) are not located in the discharge channel (50). This inconsistency between the claims and the description casts doubt on the subject matter for which protection is sought.
3. **Claim 7** fails to comply with the requirements of PCT Article 6 in so far as the subject matter for which protection is sought has not been clearly defined. The claim attempts to define said subject matter by the result to be achieved ("said pump being suitable for dispensing the fluid in a spray so fine that it cannot be detected by the user"), yet this merely amounts to stating the basic problem the invention is intended to solve without providing the technical features required to achieve this result.